

## **PLANNING COMMISSION MINUTES**

**July 16, 2013**

**7:00 pm**

Present: Chairman Tom Smith, Planning Commission Members, Michael Allen, Von Hill, Sharon Spratley, Sean Monson, City Council Representative Beth Holbrook, City Attorney Russell Mahan, City Engineer Paul Rowland, Planning Director Aric Jensen and Recording Secretary Connie Feil.

Absent: Vice Chairman Dave Badham.

Chairman Tom Smith welcomed all those present.

### **1. Approval of the minutes for July 2, 2013.**

Von Hill made a motion to approve the minutes as presented. Beth Holbrook seconded the motion and voting passed by majority vote 5-0. Sean Monson abstained from voting.

### **2. Consider approval of a Conditional Use Permit Letter, in written form, allowing a commercial telecommunication tower located at 4654 Summerwood Dr., Daniel Pitney representing Digis-Cell Tower, applicant.**

Aric Jensen explained that this is a letter that should have been brought before the Commission last Fall. The purpose is to ratify the conditions which were granted at the time of the public hearing before the Planning Commission. After review with the City Attorney, there are some changes to be made.

After a discussion among the Commission, additional changes were suggested.

Chairman Tom Smith made a motion to approve the Conditional Use Permit Letter as amended. Von Hill seconded the motion and voting was unanimous in favor.

### **3. Consider preliminary and final PUD Plat approval for Aliwood Commons Condominiums located at 1600 N. 200 W., Troy Burnett, applicant.**

Troy Burnett, applicant, was present. Paul Rowland explained that the Aliwood Condominiums homeowners association requests preliminary and final approval of the Aliwood Planned Unit Development subdivision plat. The reason for the change is the same as all of the other condo to PUD conversions that have been done over the past few years – difficulty financing sales.

This is essentially the same plat Robert Gibson proposed on behalf of the Association last year as part of his development on the adjacent property, but that agreement subsequently fell through. Mr. Gibson has since decided to develop his property independently from Aliwood, and so the association is pursuing the PUD plat on their own.

Staff recommends preliminary and final plat approval for the Aliwood Condominiums to Aliwood PUD plat with the following conditions:

1. Submit a current title report.
2. Make any minor changes to the plat per red lines.
3. Pay all required fees.

After a brief discussion Sean Monson made a motion to recommend to the City Council preliminary and final PUD plat approval for Aliwood Commons Condominiums subject to the conditions outlined by Staff. Beth Holbrook seconded the motion and voting passed by majority vote 5-0. Von Hill abstained from voting.

**4. PUBLIC HEARING – Consider granting a variance from the driveway location and construction provisions of the Bountiful Land Use Ordinance, located at 1861 E. Ridge Hollow Dr., Mark Millward, applicant.**

Jessica Millward, agent for David and Lori Egbert, was present. Aric Jensen gave a visual presentation as he explained the proposal and issues with this application for a variance.

David and Lori Egbert, property owners, request a variance from the drive approach location provisions of the Bountiful City Land Use Ordinance. The subject property is an improved lot within the R-F Residential Foothill Zone, which requires a minimum separation of 35' between drive approaches located on any individual parcel or lot. The existing drive approach and driveway on the subject property are for the exclusive benefit of the adjacent property. As a result of the location of the existing driveway, power transformer, and fire hydrant, the only place that a new drive approach benefitting the subject property can be constructed is within 10' of the existing approach benefitting the adjacent property.

At the July 2, 2013 meeting, the Planning Commission asked the Planning Director to address the non-conforming status of the property. Mr. Jensen explained that based on the evidence gathered, the subject property is a legal lot and has the same development rights as any other lot within the subdivision. This is based on the findings that the lot was legally platted at the time of creation, the boundary of the lot has not be modified since the time of creation, and the only encumbrances are utility easements and an easement to cross the property located substantially within the required front yard setback.

Mr. Jensen explained that at the time the driveway easement was granted for the adjacent parcel, the Zoning Ordinance did not preclude a second driveway adjacent to the first. If the property owner had constructed the second drive approach at the same time as the first, then the two approaches would be legal non-conforming and the applicant could apply immediately for a building permit. The fact that the subject property is a legal lot and is entitled to an access to the street doesn't grant staff the authority to administratively approve a drive access design that is contrary to the Ordinance – only the Planning Commission through the variance process can grant such an approval.

The applicant's desire for a single drive approach to access the subject property is reasonable, there are clearly special circumstances attached to the property, granting the variance is necessary for the permitted use of constructing a single-family dwelling, the variance is not contrary to the general plan or public interest, granting the variance would provide substantial justice and follow the spirit of the ordinance. However, the question at hand is whether or not the special circumstances and the need for the variance are the result of a self created or self-imposed hardship.

Mr. Jensen continued stating that both the subject property and the adjacent property were owned by the same individual, who at a point in time sold both the adjacent lot and the right to access it through the subject property to an individual. Following that, the subject property with the recorded encumbrance was sold to the Egberts.

There is no way of knowing with any certainty whether the original owner or the Egberts knew that by granting the easement the subject property would effectively be rendered unbuildable; regardless the State Code doesn't allow the Commission to take that into consideration when reviewing a variance request.

Mr. Jensen suggested that the Commission consider the following in their decision:

1. Could the adjacent property have been developed without the easement through the subject property?
2. Should the City have granted a building permit for the adjacent property given the location of the driveway on the subject property?
3. Should the Egberts have been aware when they bought the property that it was/could be potentially unbuildable because of the easement?
4. Have subsequent changes to the City Ordinances since the easement was granted created the need for a variance to construct legal access to the property?

Mr. Jensen explained that the Commission should be aware that in 1994 when the easement was recorded, the Land Use Ordinance required:

1. A minimum 15' driveway width with a maximum 15% slope for dwellings less than 200' from a street (BCZO 1993 Sec 14-13-106 E.2.), and
2. A maximum of two drive approaches on any single-family residential lot (BCZO 1993 Sec 14-18-109 A.1.), and
3. No minimum separation between drive approaches on a single-family residential lot unless they were part of a circular drive (BCZO 1993 Sec 14-18-109 A.1.).

Mr. Jensen asked the Commission to discuss the variance request and determine whether the existing hardship was self-imposed or the result of a change to the land use laws of the City subsequent to the granting of the easement. If the hardship was self-imposed, then deny the request. If the hardship was created by the City's action, then approve the request for a variance to construct a drive approach with the following conditions:

1. The proposed drive approach and related driveway shall be constructed at least 10' from the existing driveway and approach, as measured at the property line,
2. The proposed drive approach and driveway shall be 20' wide,
3. The proposed drive approach and driveway shall be designed and constructed in conformance with all current requirements, with the exception of the drive approach separation provision.

Jessica Millward thanked the Staff for all their time and efforts taken to research the information given.

The public hearing was opened for all those with comments and concerns.

The following are the names of those present with the comments:

- David Detton, representing the Community Organization, residing at 2018 Maple Grove Way
- Brandon Johnson, residing at 3085 Oakwood Dr.

Their comments and concerns were as follows:

- Property goes up for sale July 17, 2013 and the property owners on both sides of the property are bidding to purchase the property to divide between them.
- Property to steep to build a home.
- Concerns about snow removal.
- If a home is allowed to be built it should comply with all City Ordinances.

Paperwork was submitted explaining the history of ownership, building permits warranty deeds, etc. This paperwork will be attached to the minutes.

There was a discussion regarding the sale of the property and if the property is buildable. Mr. Jensen explained that the decision made tonight is only to approve or disapprove a curb cut to access the property.

Michael Allen made a motion to continue this item until ownership is established. There was not a second on the motion so motion failed.

Sharon Spratley made a motion to approve a variance for a curb cut only located at 1861 E. Ridge Hollow Dr. based on the fact that at the time of the sale of this lot there was no prohibition against putting in a second driveway. Beth Holbrook seconded the motion and voting passed by majority vote 4-2. Sharon Spratley, Beth Holbrook, Von Hill, Tom Smith voting aye and Sean Monson and Michael Allen voting nay.

5. **PUBLIC HEARING – Consider a zone map amendment from Residential Multiple-Family (RM-13) to Residential Multiple-Family Planned Development Overlay (RM-25-PDO), located at 430 W. 400 N., A.L.M. & Associated, applicants.**

Mark Greenwood and Rondo Fehlberg, representing Craig Smith, were present. Mr. Greenwood is requesting a zone map amendment from Residential Multiple-Family (RM-13) to Residential Multiple-Family Planned Development Overlay (RM-25-PDO), located at 430 W. 400 N. The applicant's intent is to construct an independent senior living center on approximately 5.32 acres located near the northeast corner of 400 North and 500 South. The subject property has frontage on 325 West and 400 North Streets and is owned by the Smith family, who also own the adjacent J&L Garden property.

Aric Jensen gave a visual presentation explaining that the proposal is simple and straightforward; but the scope of the proposal poses some challenges that need to be addressed. First, the proposed rezone to RM-25 would allow a maximum density of 133 unrestricted multi-family units, or 200 two-occupant senior living units. The current proposal is to construct 144 senior living units, which is the equivalent of 96 unrestricted units, (or slightly less than 101 units that would be allowed if the property were rezoned RM-19-PDO). As a comparison, the Village on Main Development is approximately 192 multi-family units; half senior and half unrestricted.

Second, the applicant is proposing that the east building be four stories high (approximately 50 feet), and the majority of the west building be five stories high (approximately 60-65 feet). The current Multiple-Family zone allows a maximum height of 35 feet, which is the primary reason why the applicant is applying for the Planned Development Overlay. To bring this into perspective, the four story sections would be approximately the same height as Village on Main, and the five story section would be approximately the same height as the medical office building at Renaissance Towne Centre.

Third, most of the required parking would be located under the buildings, but there is also a small surface lot on the south side of the property. An independent living center requires 1 parking stall per unit, plus .25 guest stalls per unit, for a total of 180 stalls. The proposal is to construct 188 stalls under the building and 26 stalls on the exterior, for a total of 214 stalls.

Fourth, as proposed, there will be a drive access at 325 West and at 400 North Streets. In addition, a cross-access was required of the developer of the adjacent commercial project to the west, providing a third access into the property. The City Engineer has expressed concerns about the access on to 325 West because of traffic issues related to the adjacent elementary school. He suggests that the Commission require a traffic study while school is in session to determine the existing conditions and the impacts of this proposal. Also, 400 North Street is a UDOT road and so the applicant will need to receive written approval from UDOT as part of any approval.

Sixth, a significant portion of the subject property appears to be located within a designated floodplain – which is not shown on the proposed site plan – including an area under part of the east building. The Army Corps of Engineers is currently in the process of revising all flood maps in Davis County and it is unknown whether this area will still be within a designated floodplain when they are finished. Regardless, the adjacent Barton Creek channel and related flood issues need to be addressed before any approval can be granted.

Seventh, the existing property boundary along Barton Creek is essentially linear, while the creek itself meanders substantially. In many areas of the City there are boundary gaps and overlaps due to legal descriptions tied to the center line of a creek. The applicant should provide an Alta survey showing the exact location of the property boundaries as well as the adjacent property boundaries as shown on their recorded titles, and any recorded easements and other encumbrances.

Lastly, the petition to rezone the property is a legislative matter, while site plan approval is an administrative review based on the provisions of the adopted zone. As such, the Commission and the Council have wide discretion in determining whether to approve or deny a request to rezone a property, but not in site plan review. Also, the preliminary plan as presented cannot be approved under the existing RM-13 zoning designation, and so the Commission can take no action on it.

The City has adopted certain guiding documents such as the Land Use Master Plan to help establish policy in advance of a request. Mr. Jensen reviewed the excerpts from pages 2-3 of the 2009 Land Use Master Plan related to this proposal.

Mr. Jensen explained that Staff has received several letters and phone calls in opposition of this request. The comments were concerns with the buildings being too high, increase in traffic to their neighborhood and safety issues with the residents and the children in the neighborhood especially during the school year.

Staff recommends that the Commission review the proposed zone map amendment and preliminary site plan, request the following additional information, and then continue the item to a future date when the requested information is available.

1. A traffic study of the vicinity of 325 West, conducted while school is in session.
2. A revised site plan showing the current floodplain location.
3. An illustration/diagram showing how the proposed building heights would impact westward views from the homes along 325 West,
4. A preliminary letter of approval from UDOT for a drive access onto 400 North.
5. An Alta survey showing exact property dimensions and all easements/encumbrances,
- 6 Any other relevant item that the Commission requires to render a decision.

Mr. Jensen mentioned that Staff has spoken with the applicants about the option of asking the Commission for a recommendation before they have to pay for the recommended studies.

Mr. Fehlberg explained that he would prefer to have a decision made before he is required to have studies made as requested.

The public hearing was opened for all those with comments and concerns.

The following are the names of those present with comments:

- Terry & Mike Willey, residing at 332 W. 400 N.

- Charlene Summers, residing at 338 W. 1350 N.
- Randall & Brenda Mills, residing at 230 W. 700 N.
- Josh Adams, residing at 350 W. 400 N.
- Tracen Ynchausti, residing at 304 W. 600 N.
- Reuben Anderson, residing at 825 N. 325 W.
- Ella Jean Burningham, residing at 303 W. 600 N.
- Duane Mills, residing at 317 W. 600 N.
- Susan Mills, Bountiful resident.

Their comments and concerns were as follows:

- Concerned about the height of the units.
- Don't change zoning-hold to 13 units.
- Questions regarding if the units are being sold or rented-don't want rentals
- Questions regarding the age limit for residents-can the age be changed in the future if project doesn't work.
- Are the trees going to be removed and if so will they be replaced with new ones.
- Trees and vegetation should not be allowed to be removed.
- Allowing 5 story building is too extreme for this neighborhood.
- Neighborhood has a lot of density with the school, recreation center, condos and commercial uses.
- Crime rate will increase.
- There will be an additional impact with the neighborhood losing their view due to tall buildings.
- Concerns for the safety of the children and residents of the neighborhood.

The public hearing was closed without further comments.

There was a discussion regarding the density of this project and if it really fits within the guidelines of the General Plan and how it will impact the existing neighborhood.

Michael Allen made a motion to recommend that the City Council deny the zone map amendment from Residential Multiple-Family (RM-13) to Residential Multiple-Family Planned Development Overlay (RM-25-PDO) based on the fact this project doesn't fit the neighborhood. Von Hill seconded the motion and voting passed unanimous in favor.

Russell Mahan explained the procedure for an application that has been denied by the Commission. The application still goes before the City Council to decide if another public hearing is to be held. If the City Council agrees with the Planning Commission then the request is denied and a public hearing is not necessary.

This proposal will go before the City Council at a future date unless the applicant withdraws.

**6. Consider preliminary site plan approval for Stonebridge Senior Living, located at 430 W. 400 N., A.L.M. & Associated, applicants.**

This proposal is not ready for consideration.

**7. Planning Director's report and miscellaneous business.**

Mr. Jensen had no further business to discuss.

Meeting adjourned at 9:15 pm